

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

FREEDOM FROM RELIGION FOUNDATION,
INC.; ANNE NICOL GAYLOR; ANNIE LAURIE
GAYLOR; PAUL GAYLOR; DAN BARKER;
PHYLLIS ROSE, and
JILL DEAN,

Plaintiffs,

v.

Case No. 08-CV-588

PRESIDENT BARACK OBAMA; WHITE
HOUSE PRESS SECRETARY ROBERT L.
GIBBS; WISCONSIN GOVERNOR JIM DOYLE;
and SHIRLEY DOBSON, CHAIRMAN OF THE
NATIONAL DAY OF PRAYER TASK FORCE,

Defendants.

PROPOSED FINDINGS OF FACT IN SUPPORT OF
WISCONSIN GOVERNOR JIM DOYLE'S MOTION FOR SUMMARY JUDGMENT

Defendant Wisconsin Governor Jim Doyle, by Assistant Attorney General Thomas C. Bellavia, hereby submits the following proposed findings of fact in support of Wisconsin Governor Jim Doyle's Motion for Summary judgment:

1. Plaintiff Freedom From Religion Foundation, Inc. ("FFRF") is a Wisconsin non-stock corporation with its principal office in Madison, Wisconsin. First Amended Complaint, ¶ 4 (Docket #38); Governor Doyle admits this fact.

2. FFRF is a membership organization, the mission of which includes advocating for the constitutional principle of separation of church and state. First Amended Complaint, ¶¶ 4 and 6 (Docket #38); Governor Doyle admits this fact.

3. Plaintiff Anne Nicol Gaylor is a resident of Madison, Wisconsin, a lifetime member and president emerita of FFRF, a member of the FFRF Board of Directors, and a non-believer opposed to governmental endorsement of religion. First Amended Complaint, ¶ 7 (Docket #38); Governor Doyle admits this fact.

4. Plaintiff Paul Gaylor is a resident of Madison, Wisconsin, a lifetime member and Board member of FFRF, and a non-believer opposed to governmental endorsement of religion. First Amended Complaint, ¶ 8 (Docket #38); Governor Doyle admits this fact.

5. Plaintiff Annie Laurie Gaylor is a resident of Madison, Wisconsin, a lifetime member and co-president of FFRF, editor of FFRF's newspaper "Freethought Today," and a non-believer opposed to governmental endorsement of religion. First Amended Complaint, ¶ 9 (Docket #38); Governor Doyle admits this fact.

6. Plaintiff Dan Barker is a resident of Madison, Wisconsin, a lifetime member, co-president and Public Relations Director of FFRF, and a non-believer opposed to governmental endorsement of religion. First Amended Complaint, ¶ 10 (Docket #38); Governor Doyle admits this fact.

7. Plaintiff Phyllis Rose is a resident of Madison, Wisconsin, a lifetime member and co-president of FFRF, Secretary of the FFRF Executive Council, and a non-believer opposed to governmental endorsement of religion. First Amended Complaint, ¶ 11 (Docket #38); Governor Doyle admits this fact.

8. Plaintiff Jill Dean is a resident of Madison, Wisconsin, a lifetime member and Board member of FFRF, and a non-believer opposed to governmental endorsement of religion. First Amended Complaint, ¶ 12 (Docket #38); Governor Doyle admits this fact.

9. Defendant Barack Obama is the President of the United States of America. First Amended Complaint, ¶ 13 (Docket #38); Answer and Affirmative Defenses to First Amended Complaint by Defendant Wisconsin Governor Jim Doyle (“Doyle Answer”), ¶ 13 (Docket #43).

10. Defendant Robert L. Gibbs is the White House Press Secretary for President Obama. First Amended Complaint, ¶ 15 (Docket #38); Doyle Answer, ¶ 15, (Docket #43).

11. Defendant Shirley Dobson is the Chairman of the National Day of Prayer Task Force (“NDPTF”). *See* First Amended Complaint, ¶ 19 (Docket #38); Governor Doyle admits this fact.

12. The NDPTF is an organization with a mission that includes promoting and encouraging participation in National Day of Prayer observances. *See* First Amended Complaint, ¶ 19 (Docket #38); Governor Doyle admits this fact.

13. On April 21, 2008, President George W. Bush issued a proclamation declaring May 1, 2008, as a National Day of Prayer. Complaint (Docket #1), Exhibit 1.

14. On May 7, 2009, President Barack Obama issued a proclamation declaring May 7, 2009, as a National Day of Prayer. Affidavit of Thomas C. Bellavia, ¶¶ 9-10, Exhibit 6.

15. On April 4, 2008, Governor Doyle issued a proclamation which declared May 1, 2008, as a Wisconsin Day of Prayer and which read as follows:

WHEREAS, the citizens of the State of Wisconsin are a diverse group of people of nearly every nationality and represented by a variety of religious traditions; and

WHEREAS, the history of our state is replete with leaders who voluntarily call upon their God, from the prayers sent heavenward during the Constitutional Convention to those murmured in the heat of the battle at Omaha Beach during World War II, to the intercessions offered in the aftermath of tragedies such as Columbine, September 11th, and the space shuttle break up, whether the need be great or small, Americans of faith have sought the Lord’s help with life’s challenges and adversities throughout our history; and

WHEREAS, the citizens of the State of Wisconsin have relied on prayer as a source of strength and guidance in war and peace and as our service men and women are currently defending the United States; and

WHEREAS, the theme for the upcoming observance is “America, Unite in Prayer”; and

WHEREAS, prayer is a comfort for many people, especially during times of trial and tribulation; and

WHEREAS, the citizens of Wisconsin should gather together on this day in their homes, churches, meeting places and chosen places of worship to pray in their own way for unity of the hearts of all mankind, and for strong moral character in the lives of the people of all nations, as well as, peace and understanding throughout the world;

NOW, THEREFORE, I, Jim Doyle, Governor of the State of Wisconsin, do hereby proclaim May 1, 2008

WISCONSIN DAY OF PRAYER

Complaint (Docket #1), Exhibit 3.

16. The NDPTF’s theme for the 2007 National Day of Prayer was “America, Unite in Prayer.” *See* Affidavit of Thomas C. Bellavia, ¶¶ 11-12, Exhibit 8.

17. The NDPTF’s theme for the 2008 National Day of Prayer was “Prayer! America’s Strength and Shield.” *See* Affidavit of Thomas C. Bellavia, ¶¶ 11 and 13, Exhibit 9; *see also* Complaint (Docket #1), Exhibit 1.

18. In the course of litigating this case, Governor Doyle served interrogatories upon the Plaintiffs, who subsequently served responses to those interrogatories. *See* Affidavit of Thomas C. Bellavia, ¶¶ 5-6, Exhibits 1 and 2.

19. In the course of litigating this case, the Federal Defendants served interrogatories upon the Plaintiffs, who subsequently served responses to those interrogatories. *See* Affidavit of Thomas C. Bellavia, ¶¶ 7-8, Exhibits 3 and 4.

20. Governor Doyle's interrogatory number 2 instructed Plaintiffs as follows:

For each instance in which any plaintiff in this case claims to have been exposed or subjected to a Wisconsin or federal day-of-prayer proclamation or a Wisconsin or federal day-of-prayer-related activity:

- a. describe the circumstances of the exposure or subjection, including but not limited to date, location, persons present, and nature of the proclamation or activity;
- b. describe the nature of the plaintiff's participation in, observation of, or involvement with the proclamation or activity;
- c. describe how the plaintiff in question came to learn of the proclamation or activity, including but not limited to any steps taken by the plaintiff to become informed about that proclamation or activity;
- d. describe every interest of the plaintiff in question that you contend has been adversely affected by that exposure or subjection; and
- e. describe all changes to the behavior of the plaintiff in question that you contend have been caused by that exposure or subjection.

Affidavit of Thomas C. Bellavia, ¶ 5, Exhibit 1 at 5.

21. Governor Doyle's interrogatories further instructed Plaintiffs that the word "[d]escribe," when used in reference to a communication or factual situation means to identify the date and persons involved in the communication or factual situation and to state with particularity all facts known to you that relate in any way to that communication or factual situation."

Affidavit of Thomas C. Bellavia, ¶ 5, Exhibit 1 at 2.

22. Plaintiffs responded to Governor Doyle's interrogatory number 2 with a single sentence, stating: "See Plaintiffs' Answers to Federal Defendants' Interrogatories." Affidavit of Thomas C. Bellavia, ¶ 6, Exhibit 2 at 2.

23. The Federal Defendants' interrogatory number 3 instructed Plaintiffs as follows: "For each Individual Plaintiff, describe how the plaintiff learned of the existence of the National Day of Prayer." Affidavit of Thomas C. Bellavia, ¶ 7, Exhibit 3 at 3.

24. In response to Federal Defendants' interrogatory number 3, Anne Gaylor stated that she "knew about the National Day of Prayer from publicity in newspapers and/or on television." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 2. She further stated that "[s]he also knew about the NDP from complaints by members who phoned FFRF when they picked up on violations of the separation of church and state." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 2.

25. In response to Federal Defendants' interrogatory number 3, Annie Laurie Gaylor stated that she "has known and been concerned about the National Day of Prayer since at least shortly after 1976 (if not before), when she, at age 21, with her mother Anne Gaylor, co-founded the Freedom From Religion Foundation as a regional group dedicated to work for state/church separation in Madison, Wisconsin." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 3. She also noted that, as editor of FFRF's newspaper since 1985, "she has regularly reported on the National Day of Prayer, federal, state or local incidents, as well as reporting on activism by members over the National Day of Prayer and government-sponsored prayer." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 3. She further stated that "[t]he complaints FFRF receives each year about the NDP have made Annie Laurie very aware of how much division and controversy the proclamations create, and how so many FFRF members have wished FFRF to take action against the practice." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 3.

26. In response to Federal Defendants' interrogatory number 3, Paul Gaylor indicated that he "read about the NDP in the newspapers so long ago he doesn't recall the first time." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 4.

27. In response to Federal Defendants' interrogatory number 3, Dan Barker stated that he "is sure he heard of the NDP before the 1980s, when he was a minister, but he distinctly remembers seeing or hearing something on television (probably a news story) in the early 1980s when President Ronald Reagan signed one of the NDP Proclamations." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 4.

28. In response to Federal Defendants' interrogatory number 3, Phyllis Rose said that she "learned of the existence of the National Day of Prayer while working at the Freedom From Religion Foundation." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 4.

29. In response to Federal Defendants' interrogatory number 3, Jill Dean stated that she "became aware of the National Day of Prayer over time by hearing news accounts, although she cannot recall the very first time she heard or saw such a report." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 4. She also indicated that "news accounts of an NDP prayer breakfast sponsored by the Burnett County Sheriff, in Wisconsin" made her distinctly aware of the National Day of Prayer in 2008. Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 4.

30. The Federal Defendants' interrogatory number 4 instructed each individual plaintiff to "describe how the plaintiff obtained, learned of, or was exposed to President Bush's 2008 National Day of Prayer proclamation. Affidavit of Thomas C. Bellavia, ¶ 7, Exhibit 3 at 3.

31. In response to Federal Defendants' interrogatory number 4, Anne Gaylor responded that "[t]he 2008 NDP Proclamation by President Bush was brought to Anne Gaylor's attention by her daughter, Annie Laurie Gaylor, because FFRF has monitored this activity, while

putting up with it for so many years.” Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 6. She also indicated that “Annie Laurie reports on violations to Anne regularly since Anne is . . . still officially a consultant with the Foundation, and remains on the Board of Directors.” Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 5-6.

32. In response to Federal Defendants’ interrogatory number 4, Annie Laurie Gaylor stated that she “first learned about the 2008 proclamation from the National Day of Prayer Taskforce website before the event itself, which she has routinely monitored in the spring for many years. She also corroborated the 2008 proclamation at the White House website, which is her usual practice.” Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 6. She further noted that “[s]he also has been on a ‘Focus on the Family’ mailing list since sometime in the late 1980s or early 1990s, from which she receives annual mailings about the National Day of Prayer and the Taskforce.” Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 6.

33. In response to Federal Defendants’ interrogatory number 4, Paul Gaylor indicated that he “learned about the 2008 NDP Proclamation through his wife, Anne Gaylor.” Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 6.

34. In response to Federal Defendants’ interrogatory number 4, Dan Barker indicated that, “while working at FFRF, [he] has been watching the NDP for years.” Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 6. He further stated that “[i]n early 2008 he had anticipated President Bush’s signing and had been to the National Day of Prayer Taskforce website to see what wording they were recommending. Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 7. In addition, on April 22 or 23, 2008, “he heard by telephone from FFRF staff, including co-president Annie Laurie Gaylor, that President Bush had issued the proclamation.” Affidavit of Thomas C.

Bellavia, ¶ 8, Exhibit 4 at 6. Soon thereafter, he confirmed the wording of the proclamation “by looking on the internet.” Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 6-7.

35. In response to Federal Defendants’ interrogatory number 4, Phyllis Rose said that she “learned of President Bush’s 2008 National Day of Prayer Proclamation while working at the Freedom From Religion Foundation.” Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 7.

36. In response to Federal Defendants’ interrogatory number 4, Jill Dean stated that she “first became aware of the 2008 National Day of Prayer as a result of the controversy involving Burnett County’s prayer breakfast sponsored by the County Sheriff in conjunction with the National Day of Prayer.” Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 7.

37. The Federal Defendants’ interrogatory number 5 instructed each individual plaintiff to “describe how the plaintiff obtained, learned of, or was exposed to President Obama’s 2009 National Day of Prayer proclamation.” Affidavit of Thomas C. Bellavia, ¶ 7, Exhibit 3 at 3.

38. In response to Federal Defendants’ interrogatory number 5, Anne Gaylor responded that she “learned of President Obama’s NDP proclamation from Annie Laurie Gaylor. Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 7.

39. In response to Federal Defendants’ interrogatory number 5, Annie Laurie Gaylor stated that she “monitored both the White House website and the National Day of Prayer Taskforce in advance of the 2009 proclamation.” Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 7. She also “learned that President Obama would be issuing a proclamation from numerous prominent national news stories in the Washington Post and over the wire . . .” Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 8. She “was also able to verify the wording of Obama’s proclamation at the White House official website by the first Thursday in May 2009.” Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 8.

40. In response to Federal Defendants' interrogatory number 5, Paul Gaylor indicated that he "learned of President Obama's proclamation from Anne Gaylor." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 8.

41. In response to Federal Defendants' interrogatory number 5, Dan Barker indicated that, "while working at the FFRF, [he] has been watching the National Day of Prayer for years." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 8. He further stated that "[i]n early 2009, he had wondered if President Obama would incorporate any suggested wording from the National Day of Prayer Taskforce." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 8. He subsequently "learned by watching the news on the internet on May 7 or 8 that President Obama had issued a National Day of Prayer Proclamation on May 7, the actual date (first Thursday in May) of the National Day of Prayer." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 8-9.

42. In response to Federal Defendants' interrogatory number 5, Phyllis Rose said that she "learned of President Obama's 2009 National Day of Prayer Proclamation while working at the Freedom From Religion Foundation." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 9.

43. In response to Federal Defendants' interrogatory number 5, Jill Dean stated that she "has no specific recollection [of] President Obama's 2009 National Day of Prayer Proclamation, although she again was aware that a National Day of Prayer was designated, through exposures to the media." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 9.

44. The Federal Defendants' interrogatory number 6 instructed each individual plaintiff to "identify any and all activities (other than this lawsuit) relating to the National Day of Prayer in which the plaintiff participated, or that the plaintiff observed or protested." Affidavit of Thomas C. Bellavia, ¶ 7, Exhibit 3 at 3.

45. In response to Federal Defendants' interrogatory number 6, Anne Gaylor responded that she "picketed the First Annual Wisconsin Prayer Breakfast, outside the Concourse Hotel in Madison, Wis., Friday, March 20, 1992 . . ." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 9. She also indicated that she "formally protested the misuse of the Great Seal of the State of Wisconsin by the Madison Kiwanis-West, who were the private sponsors of the prayer breakfast . . ." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 10. She further said that she "also has talked with innumerable FFRF members from 1978 until her retirement in 2004, which members called to see if there was something as an organization that FFRF could do about the NDP." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 10. She also noted that she "has studied the proclamations by various public officials, and contacted them to protest the violation of a basic constitutional principle, sometimes releasing a statement to the media." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 11.

46. In response to Federal Defendants' interrogatory number 6, Annie Laurie Gaylor said that she co-hosts a weekly radio show for FFRF which "has included commentary about the NDP." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 13. She also said that she directs FFRF's activities of "monitor[ing] the news . . . and look[ing] for updates at the White House website, NDP Taskforce website and various governor websites." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 13. In addition, she indicated that, from 1985 to the present, she "has been responsible for writing and disseminating press releases" for FFRF and "has reported on NDP violations in Freethought Today [FFRF's newspaper] . . . and on the FFRF website." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 13-14. She also provided more than 21 pages containing descriptions of more than 100 news releases and articles concerning government activities related to prayer. Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 13-35. She noted

that she “solicited many of the articles from members relating to the NDP, knowing of their activism.” Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 35. Annie Laurie Gaylor summarized her response by stating that she “has observed and participated in protesting the NDP by monitoring for violations, often reporting on violations or FFRF protests of the violation, writing press releases or letters of complaint and urging members to protest violations at local, regional or national levels.” Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 35.

47. In response to Federal Defendants’ interrogatory number 6, Paul Gaylor stated that he “participated in and took photographs and was security for the ‘first annual Wisconsin prayer breakfast’ counterpicket, at the Concourse Hotel, 1 W. Dayton St., Madison, Wis., Friday, March 20, 1992.” Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 35. He further indicated that, “[a]s an FFRF volunteer, . . . [he] also helped to open the heavy volume of mail for FFRF for at least 10 years, and he remembers encountering letters or clippings related to complaints about the NDP and governmental prayer and prayer breakfasts, etc.” Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 35.

48. In response to Federal Defendants’ interrogatory number 6, Dan Barker said that he “has opposed the NDP in written comments that have been published over the years . . . [and] also has read about protests . . .” Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 36.

49. In response to Federal Defendants’ interrogatory number 6, Phyllis Rose indicated that she “began volunteering with the Freedom From Religion Foundation precisely because she found the government’s promotion of religion to be harder and harder to ignore.” Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 36. She described at some length how she is “offended and disturbed by the government asking persons to pray,” but provided no additional facts responsive to the interrogatory. Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 36.

50. In response to Federal Defendants' interrogatory number 6, Jill Dean responded that she "has participated in opposition to the National Day of Prayer through her volunteer work for and support of the Freedom From Religion Foundation." Affidavit of Thomas C. Bellavia, ¶ 8, Exhibit 4 at 37.

51. Governor Doyle's interrogatory number 1 instructed Plaintiffs to "[i]dentify every Wisconsin day-of-prayer proclamation on which plaintiffs rely to support any of the claims in the First Amended Complaint." Affidavit of Thomas C. Bellavia, ¶ 5, Exhibit 1 at 4.

52. Governor Doyle's interrogatories also expressly instructed Plaintiffs that, "[w]hen used in connection with a document, 'identify' means to state the date of the document, describe the nature and substance of the document with sufficient particularity to enable the document to be identified, and to state the last known location of the document." *See* Affidavit of Thomas C. Bellavia, ¶ 5, Exhibit 1 at 3.

53. In response to Governor Doyle's interrogatory number 1, Plaintiffs answered: "All Day of Prayer proclamations by Wisconsin governors give the appearance of religious endorsement in violation of the Establishment Clause, including without limitation the 2008 proclamation." Affidavit of Thomas C. Bellavia, ¶ 6, Exhibit 2 at 2.

Dated this 9th day of October, 2009.

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